

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

SONS OF ARTHRITIS LLC,
Plaintiff

vs.

LOW TIDE GROUP and JAMES
BARCHIESI
Defendants

:
:
:
:
:
:
:

Civil Action
No. _____

COMPLAINT

Plaintiff Sons of Arthritis LLC, by its undersigned counsel, files this Complaint, averring as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.
2. Venue is proper in this District pursuant to 28 U.S.C. § 1391 as Defendant James Barchiesi resides within this District and all Defendants are residents of the Commonwealth of Pennsylvania.

PARTIES

3. Plaintiff Sons of Arthritis LLC is a Texas limited liability company with a principal place of business at 43 Tender Violet Place, The Woodlands, Texas 77381 ("SOA").

4. Defendant Low Tide Group is a Pennsylvania limited liability company with a principal place of business at 57 S Commerce Way, Suite 220, Bethlehem, Pennsylvania 18017 ("Low Tide").

5. Defendant James Barchiesi is an adult resident of the Commonwealth of Pennsylvania with a principal place of residence at 115 Imperial Drive, #1, East Stroudsburg, Pennsylvania 18302 ("Barchiesi").

THE CLAIM

6. SOA is the sole owner of the registered trademark "Sons of Arthritis" (US Reg # 4,858,658, EU & UK Reg# 1249833 and Canadian Reg# TMA941,158) (the "Mark").

7. SOA is in the business of selling merchandise to which the Mark is affixed.

8. SOA sells goods to which the Mark is affixed in interstate commerce.

9. SOA is the sole owner of the domain name "*sonsofarthritis.com*."

10. On March 19, 2017, SOA and Barchiesi executed a license agreement (the "Agreement").

11. While the Agreement was in force, Barchiesi was authorized to sell goods to which the Mark was affixed.

12. As per the terms of the Agreement, on May 21, 2018, the Agreement was terminated.

13. With the termination of the Agreement, Barchiesi may no longer sell goods to which the Mark is affixed.

14. Moreover, Barchiesi sells those goods from a website that is virtually identical to the website owned and operated by SOA.

15. It is believed and therefore averred, that Barchiesi has made sales of goods that have the Mark affixed thereto and that Barchiesi has no intention of honoring those sales.

16. Regardless of his intention to honor those sales, Barchiesi has no legal right to sell any goods that contain the Mark.

17. Through hard work and substantial investment, SOA has acquired and enjoyed for many years past, and still enjoys, a reputation of excellence for quality goods to which the Mark is affixed.

18. SOA provided Barchiesi with a database of email addresses for customers of SOA.

19. Moreover, the Mark has acquired a substantial following.

20. The Mark is universally known and recognized amongst members of the biking community.

21. Barchiesi's conduct infringes upon SOA's interest in the Mark.

22. Barchiesi's infringement is unlawful and has and will cause confusion among those purchasing Barchiesi's infringing goods unless abated.

23. Barchiesi's infringement has and continues to cause great pecuniary loss to SOA and has and will harm the Mark and the reputation that it has established for SOA.

24. Barchiesi at all times relevant hereto intended to use the Mark despite knowing he had no lawful right.

25. Despite SOA's request, Barchiesi has refused to turn over the database of email addresses belonging to SOA.

26. Barchiesi's conduct is willful and in bad faith.

**COUNT I – INFRINGEMENT OF A REGISTERED TRADEMARK IN
VIOLATION OF 15 USC § 1114(1)**

27. SOA hereby incorporates by reference all of the preceding paragraphs of this Complaint with the same force and effect as though each were set forth at length herein.

28. Barchiesi's conduct is a violation of 15 USC § 1114(1).

29. SOA is entitled to a preliminary injunction to prevent Barchiesi from infringing on SOA's rights in the Mark and to prevent continued public confusion.

WHEREFORE, Plaintiff Sons of Arthritis LLC respectfully requests this Court to enter judgment in its favor and against Defendants Low Tide Group and James Barchiesi for damages, attorney fees and costs of this lawsuit, and to grant the following other relief:

- a. that Defendants and their employees and servants be enjoined, preliminarily until trial and permanently thereafter, from selling or offering or exposing for sale any product or service with the Mark and from employing any counterfeit of the Mark or any counterfeit label that resembles the Mark, or any part thereof;
- b. that Defendants be ordered to deliver for cancellation any and all counterfeit items in their possession, or in the possession of any agent, representative or bailee of Defendants that resemble the Mark or any part thereof; and that Defendants be further ordered to deliver for cancellation any and all blocks, dies, plates, casts, brands, stencils, or other instruments or materials used in printing, making, stamping or engraving any item that would infringe on the Mark; and
- c. such other relief as this Court may deem just and proper.

COUNT II- UNFAIR COMPETITION IN VIOLATION OF 15 USC § 1125 (A)

30. SOA hereby incorporates by reference all of the preceding paragraphs of this Complaint with the same force and effect as though each were set forth at length herein.

31. Barchiesi's conduct violates 15 USC § 1125(a).

WHEREFORE, Plaintiff Sons of Arthritis LLC respectfully requests this Court to enter judgment in its favor and against Defendants Low Tide Group and

James Barchiesi for damages, attorney fees and costs of this lawsuit, and to grant the following other relief:

- a. that Defendants and their employees and servants be enjoined, preliminarily until trial and permanently thereafter, from selling or offering or exposing for sale any product or service with the Mark and from employing any counterfeit of the Mark or any counterfeit label that resembles the Mark, or any part thereof;
- b. that Defendants be ordered to deliver for cancellation any and all counterfeit items in their possession, or in the possession of any agent, representative or bailee of Defendants that resemble the Mark or any part thereof; and that Defendants be further ordered to deliver for cancellation any and all blocks, dies, plates, casts, brands, stencils, or other instruments or materials used in printing, making, stamping or engraving any item that would infringe on the Mark;
- c. that Defendants be ordered to deliver the database of emails, including any and all copies thereof, and be enjoined, preliminarily until trial and permanently thereafter, from contacting any of SOA's customers in the database of emails; and
- d. such other relief as this Court may deem just and proper.

COUNT III- STATE COMMON LAW UNFAIR COMPETITION

32. SOA hereby incorporates by reference all of the preceding paragraphs of this Complaint with the same force and effect as though each were set forth at length herein.

33. Barchiesi's acts establish a cause of action for the state common law tort of Unfair Competition.

34. SOA is entitled to a preliminary injunction.

WHEREFORE, Plaintiff Sons of Arthritis LLC respectfully requests this Court to enter judgment in its favor and against Defendants in an amount in excess of \$75,000.00, together with costs of suit.

COUNT IV- PERMEANT INJUNCTION

35. SOA hereby incorporates by reference all of the preceding paragraphs of this Complaint with the same force and effect as though each were set forth at length herein.

36. SOA is entitled to a permeant injunction.

WHEREFORE, Plaintiff Sons of Arthritis LLC respectfully requests this Court to enter a permanent injunction in its favor and against Defendants.

JURY TRIAL DEMANDED ON ALL COUNTS

Dated: July 23, 2018

Respectfully submitted,

/s/ Brian J. Pulito

Brian J. Pulito

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